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The South Carolina Court of Appeals ^{SC} Court of Appeals

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November 02, 2018

The Honorable Renee Elvis
PO Box 677
Conway SC 29528-0677

REMITTITUR

Re: The State v. Ardon P. Cato, II
Lower Court Case No. 2005GS2603412
Appellate Case No. 2016-002081

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

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HARRIS COUNTY, SC

Enclosure

cc: Ardon Percival Cato, II, 00316535
Jimmy A. Richardson, II, Esquire
Alan McCrory Wilson, Esquire
J. Anthony Mabry, Esquire

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Ardon Percival Cato, II, Appellant.

Appellate Case No. 2016-002081

Appeal From Horry County
Steven H. John, Circuit Court Judge

Unpublished Opinion No. 2018-UP-383
Submitted September 1, 2018 – Filed October 17, 2018

AFFIRMED

Ardon Percival Cato, II, pro se.

Attorney General Alan McCrory Wilson and Senior
Assistant Attorney General Anthony Mabry, both of
Columbia; and Solicitor Jimmy A. Richardson, II, of
Conway, all for Respondent.

PER CURIAM: Ardon Percival Cato, II, appeals the circuit court's denial of his motion for a new trial based on after-discovered evidence pursuant to Rule 29(b) of

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the South Carolina Rules of Criminal Procedure. We affirm¹ pursuant to Rule 220(b), SCACR, and the following authorities: *State v. Spann*, 334 S.C. 618, 619-20, 513 S.E.2d 98, 99 (1999) (providing that an appellant seeking a new trial based on after-discovered evidence must show the evidence "(1) is such that it would probably change the result if a new trial were granted; (2) has been discovered since the trial; (3) could not in the exercise of due diligence have been discovered prior to the trial; (4) is material; and (5) is not merely cumulative or impeaching"); *State v. Johnson*, 376 S.C. 8, 11, 654 S.E.2d 835, 836 (2007) ("A [circuit court] has the discretion to grant or deny a motion for a new trial, and [its] decision will not be reversed absent a clear abuse of discretion."); *State v. Needs*, 333 S.C. 134, 158, 508 S.E.2d 857, 869 (1998), *holding modified on other grounds by State v. Cherry*, 361 S.C. 588, 606 S.E.2d 475 (2004) ("The granting of such a motion is not favored and, absent error of law or abuse of discretion, an appellate court will not disturb the [circuit court's] denial of the motion."); *State v. Harris*, 391 S.C. 539, 545, 706 S.E.2d 526, 529 (Ct. App. 2011) ("On review, we may not make our own findings of fact. The deferential standard of review constrains us to affirm the [circuit] court if reasonably supported by the evidence." (quoting *State v. Mercer*, 381 S.C. 149, 167, 672 S.E.2d 556, 565 (2009))); *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) ("[S]tatements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements.").

AFFIRMED.

HUFF, SHORT, and WILLIAMS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

KAC

Renee N. Elvis
Clerk of Court of Horry County
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